

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

KAREN McPETERS, individually, and on §
behalf of those individuals, persons and entities §
who are similarly situated §
Plaintiff §

vs.

§ CIVIL ACTION NO. 4:10-CV-01103
§

JURY

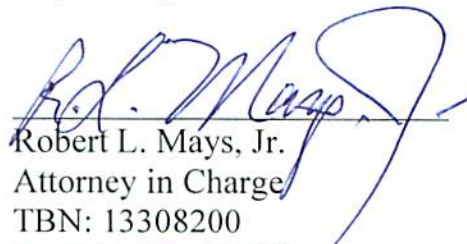
THE HONORABLE FREDERICK E. §
EDWARDS; BARBARA GLADDEN §
ADAMICK, DISTRICT CLERK; §
MONTGOMERY COUNTY, TEXAS, and §
REED ELSEVIER, INC. d/b/a LexisNexis §
Defendants §

PLAINTIFF’S HEARING BRIEF No. 6 -
RICO ACTIVITY DOES NOT REQUIRE A SEPARATE ENTERPRISE

Plaintiff Karen McPeters submits the attached brief as the law and evidence
in support of her request that Defendants’ Rule 12(b)(6) motions be denied.

Date: December 9, 2010

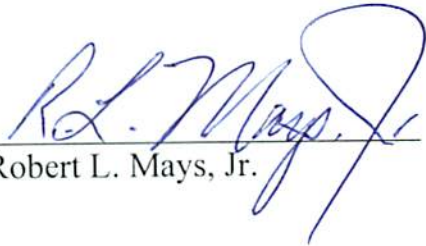
Respectfully submitted,



Robert L. Mays, Jr.
Attorney in Charge
TBN: 13308200
So. Dist. ID: 11606
8626 Tesoro Drive, Suite 820
San Antonio, Texas 78217
Phone: 210-657-7772
FAX: 210-657-7780

CERTIFICATE OF SERVICE

I certify that I hand delivered a copy of this "Plaintiff's Hearing Brief No. 6 – RICO Activity Does Not Require A Separate Enterprise" on December 9, 2010 to each counsel for Defendant present at the hearing.


Robert L. Mays, Jr.

RICO ACTIVITY DOES NOT REQUIRE A SEPARATE ENTERPRISE

The ongoing enterprise conclusion is appropriate because Defendants maintain they are not doing anything wrong. *Strain v. Kaufman County District Attorney's Office*, 23 F.Supp. 2d 685 (N.D. Tex. 1998); *Pan American Maritime, Inc. v. Esco Marine, Inc.*, 2005 WL 1155149 (S.D. Tex 2005).

A helpful statement of the law described above has been provided by the United States Supreme Court.

We see no basis in the language of RICO for the structural requirements that petitioner asks us to recognize. As we said in *Turkette*, an association-in-fact enterprise is simply a continuing unit that functions with a common purpose. Such a group need not have a hierarchical structure or a "chain of command"; decisions may be made on an ad hoc basis and by any number of methods-by majority vote, consensus, a show of strength, etc. Members of the group need not have fixed roles; different members may perform different roles at different times.

Boyle v. United States, ___ U.S. ___, 129 S.Ct. 2237, 2245, 173 L.Ed.2d 1265 (S.Ct. 2009).

In *Boyle*, the Supreme Court clearly explained that the separation of the enterprise from the racketeering activity does *not* mean that that separate collaborations must be shown. One need only separately prove an enterprise and a pattern of racketeering activity because these defined terms have different elements.

Boyle explained the phrase, "*Beyond that inherent in the pattern of racketeering activity.*"

This phrase may be interpreted in least two different ways, and its correctness depends on the particular sense in which the phrase is used. If the phrase is interpreted to mean that the existence of an enterprise is a separate element that must be proved, it is of course correct. As we explained in *Turkette*, the existence of an enterprise is an element distinct from the pattern of racketeering activity and "proof of one does not necessarily establish the other." *Boyle* at 2245.

Any combination that constitutes both an enterprise and a pattern of racketeering activity is a RICO entity. The fact that the evidence may overlap or appear to coalesce does not defeat a RICO claim. “We recognized in *Turkette* that the evidence used to prove the pattern of racketeering activity and the evidence establishing an enterprise “may in particular cases coalesce.” *Id.*

CAUSE NO. 07-09-09142 CV

9TH JUDICIAL DISTRICT COURT
MONTGOMERY COUNTY, TEXAS

ORDER ON FAILURE TO E-FILE

RECEIVED AND FILED
FOR REC'D
CLERK
JUL 26 2010
BARBARA PLADEN
MONTGOMERY COUNTY, TEXAS

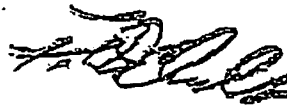
On 09-10-07, this case was designated as an e-file case pursuant to the Montgomery County Local Rule Regarding E-file, Texas Supreme Court Docket No. 97-9155 (1997).

Accordingly, all documents must be e-filed in compliance with the Local Rules and this Court's "ORDER REGARDING E-FILE DESIGNATION AND LIVE DATE." Any documents that are conventionally filed but not e-filed will not be considered by the Court until they are e-filed and the Court receives notice of the e-filing.

Further violations of the e-filing designation may result in a show cause hearing to determine compliance with the order.

The parties are hereby ORDERED to electronically file the document(s) in the proper form pursuant to the Local Rules of Montgomery County, Texas via the designated electronic filing system.

SIGNED on this 26 day of July, 2010.



PRESIDING JUDGE

EXHIBIT "O"

E-FILE
32391836

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